

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LEWIS BECERRA,

Plaintiff,

vs.

No. CIV 99-1216 LH/LCS

JOHN DANTIS, et al.,

Defendants.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court upon Defendant Lawrence Mason's Motion to Dismiss, contained within Defendant Mason's Answer filed December 7, 1999 (*Doc. 10*). This Court set a briefing schedule on the motion to dismiss on December 17, 1999 (*Doc. 13*). Defendant Mason filed a timely memorandum in support of his motion to dismiss on January 13, 2000 (*Doc. 15*). Plaintiff was ordered to file a response to the motion to dismiss no later than February 22, 2000. As of this date, Plaintiff has not responded to Defendant Mason's motion to dismiss.

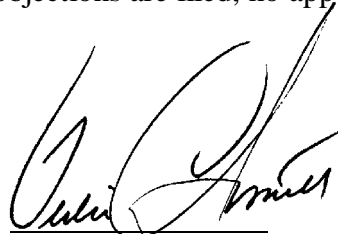
Local Rule D.N.M. LR-Civ. 7.5(b) provides that failure to file a response in opposition to any motion constitutes consent to grant the motion. Accordingly, I propose finding that Plaintiff consents to dismissal of all claims against Defendant Mason.

I also find that Defendant Mason's motion to dismiss is well-taken on its merits and should be granted. Plaintiff's federal claims are subject to dismissal because he has failed to respond to

Defendant Mason's allegation that he has not exhausted all administrative remedies as required by the Prison Litigation Reform Act. *See* 42 U.S.C. § 1997e (a). Plaintiff's state law claims are subject to dismissal because he has not established that governmental immunity under the New Mexico Tort Claims Act, N.M. Stat. Ann. § 41-4-4, has been waived for his claims.

Recommended Disposition

I recommend that Defendant Lawrence Mason's Motion to Dismiss, contained within Defendant Mason's Answer filed December 7, 1999 (*Doc. 10*), be GRANTED and that all claims against Defendant Mason be DISMISSED with prejudice. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.



LESLIE C. SMITH
United States Magistrate Judge